

FILED ELECTRONICALLY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.	: 10/759,884	Confirmation No. 8466
Applicant	: David Wayne Spears et al.	
Filed	: January 15, 2004	
Art Unit	: 3687	
Examiner	: Vanel Frenel	
Title	: METHOD AND SYSTEM FOR INCREASING ADVANCED ORDERS	
Docket No.	: SPEAD-80546	
Customer No.	: 24201	January 6, 2010

Commissioner for Patents

REQUEST FOR CONSIDERATION OF RCE FILED NOVEMBER 9, 2009

Dear Sir:

This request for consideration of a previously filed RCE is being filed in response to the Advisory Action of December 8, 2009. It would appear that the Request for Continued Examination that had been filed on November 9, 2009 has been overlooked. There is a USPTO stamp on the first page of the paper filed November 9, 2009 charging the fees for an RCE (see Exhibit A).

Applicant respectfully requests recognition by the Examiner of the RCE and an Office Action on the merits instead of an Advisory Action.

Applicant telephoned the Examiner on January 5, 2010 and left a message pertaining to this matter. But having not received a response on January 6, 2010, Applicant is filing the present paper. The undersigned respectfully requests a telephone call from the Examiner to confirm that the RCE is being considered and that an Office

Action on the merits will issue in due course. Thank you in advance for your courtesy in this regard.

Respectfully submitted,

FULWIDER PATTON LLP

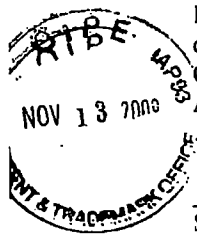
/Scott R. Hansen/

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# **EXHIBIT A**

IFW / Ref



I certify that this paper was deposited as US First Class mail on November 9, 2009, postage prepaid, and addressed to:  
Commissioner for Patents, P.O. Box 1450,  
Alexandria, VA 22313-1450

*Scott R. Hansen*  
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P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION OF JULY 7, 2009 AND**  
**REQUEST FOR CONTINUED EXAMINATION (RCE)**

Dear Sir:

This paper responds to the final Office Action mailed July 7, 2009, for which a reply is due on November 9, 2009 with a one month extension of time to respond, which is hereby requested. Request for Continued Examination (RCE) is also hereby made.

Please enter the following amendment and consider the response in connection with the above-identified pending application.

11/16/2009 RHEBRAHT 00000015 062425 10759884  
01 FC:2251 65.00 DA  
02 FC:2801 405.00 DA

Amendments to the claims start on page 2.

Remarks start on page 7.

↑  
Charged for RCE

## AMENDMENTS TO THE CLAIMS:

The below listing of claims will replace all prior versions and listings of the claims in the application:

### LISTING OF CLAIMS:

Delete claims 1-9.

10. (Currently Amended) A computer readable storage medium encoded with computer program instructions which when accessed by a computer cause the computer to load the program instructions to a memory therein creating a special purpose data structure causing the computer to operate as a specially programmed computer, executing a method of dynamic release date, comprising:

creating in the specially programmed computer database a target release date;

transmitting to an interface of the specially programmed computer the target release date and a target number of advance orders;

receiving a number of advance orders from a plurality of advance purchasers;

transforming the target release date into an actual release date when the number of received advance orders from advance purchasers equals the target number of advance orders;

wherein the method of dynamic release date further includes offering incentives to potential purchasers to submit advance orders.

11. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the target release date is for the release of at least one of a compact disk and a dvd.

12. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the target release date is a release date for a movie.

13. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the method of dynamic release date further includes the step of advancing the target release date to a second, earlier revised release date when the target number of advance orders is received.

14. (Previously Presented) A computer readable storage medium as defined in claim 13, wherein the method of dynamic release date further includes the step of setting a goal and, when both the goal is met and the target number of advance orders is received, advancing the target release date to a third revised release date that is earlier than the second revised release date.

15. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the method of dynamic release date further includes resetting the target release date to a second target release date when the target number of advance orders is not received prior to the target release date.

16. (Cancelled)

17. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the method includes providing goal feedback information to at least some of the advance purchasers.

18. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the method of dynamic release date further includes transmitting to an interface of the specially programmed computer a target release date, a target number of advance orders, and a second release date, wherein the target release date becomes an actual release date if the target number of advance orders is received, and the second release date becomes the actual release date if the target number of advance orders is not received.

19. (Previously Presented) A computer readable storage medium as defined in claim 10, wherein the method of dynamic release date further includes releasing a product to advance purchasers on the actual release date, and releasing the product to other purchasers at a later release date.

20. (Currently Amended) A computer readable storage medium encoded with computer program instructions which when accessed by a computer cause the computer to load the program instructions to a memory therein creating a special purpose data structure causing the computer to operate as a specially programmed computer, executing a method of dynamic release date, comprising:

creating in the specially programmed computer database a target release date;

transmitting to an interface of the specially programmed computer the target release date and a target number of advance orders;

offering incentives to potential purchasers to submit advance orders;

receiving a number of advance orders from a plurality of advance purchasers;

providing goal feedback information to at least some of the advance purchasers;  
and

transforming the target release date into an actual release date when the number of received advance orders from advance purchasers equals the target number of advance orders; and

setting a revised target release date when the number of received advance orders from advance purchasers as of a predetermined time is less than the target number of advance orders.

21. (Previously Presented) A computer readable storage medium as defined in claim 20, wherein the method of dynamic release date further comprises advancing the target release date to a second, earlier revised release date when the target number of advance orders is received prior to the target release date.

22. (Previously Presented) A computer readable storage medium as defined in claim 20, wherein the target release date is for the release of at least one of a compact disk, a dvd, a movie, a play, an interview, a lecture, a tutorial, a broadcast and a roundtable discussion.

23. (Previously Presented) A computer readable storage medium as defined in claim 20, wherein the incentive is a discount.

24. (Previously Presented) A computer readable storage medium as defined in claim 20, wherein the method of dynamic release date further comprises receiving advance orders over the internet.

25. (Previously Presented) A computer readable storage medium as defined in claim 20, wherein the advance orders are made for a product that is available in both digital and hard copy form.

26. (Previously Presented) A computer readable storage medium as defined in claim 20, wherein the method of dynamic release date further comprises releasing a product to advance purchasers on the actual release date, and releasing the product to other purchasers at a later release date.

27. (Previously Presented) A computer readable storage medium as defined in claim 26, wherein:

the advance orders are made for a product that is available in both digital and hard copy form;



one form of the product is released to advance purchasers on the actual release date, and both forms of the product are released to other purchasers at a later release date.

28. (Previously Presented) A computer readable storage medium as defined in claim 26, wherein:

the advance orders are made for a product that is available in both digital and hard copy form;

one form of the product is released to advance purchasers on the actual release date, and a different form of the product is released to other purchasers at a later release date.

## **REMARKS**

Claims 10-28 were previously pending. Claims 1-9 were previously cancelled. By this paper, independent claims 10 and 20 are amended and claim 16 is cancelled. The pending claims are now claims 10-15 and 17-28.

### **Obviousness Rejections Under 35 USC 103**

The Office action of July 7, 2009 rejected claims 10-28 as obvious over the Goel reference (Publication Number 2008/0052185) in view of Mesaros (US Patent No. 7,181,419).

Concerning Goel, the following dates are of interest:

Filing Date of Present Application: Jan. 15, 2004

Filing Date of Goel: Aug. 17, 2007

Publication Date of Goel: Feb. 28, 2008

It is respectfully submitted that the Goel reference, having been published over four (4) years after the filing date of the present application, is not art to which one of skill in the art could have turned at the time of the present invention.

The Goel reference claims priority (as a continuation-in-part) of several earlier applications, filed in 2004 (now US Patent No. 7,418,409), 2006 and 2007.

Considering the '409 patent, it has only Figs. 1-22, compared to the Figs. 1-105 of the 2008 Goel '185 reference that is cited in the Office Action. The '409 patent focuses on a method of questioning potential airline passengers about their preferences, to then offer them incentives that are consistent with the airline's goals. See, for example, Col. 9, ll. 11-13, "[T]he Customer Engine 230 administers a questionnaire or survey which is designed to elicit information useful in constructing options to offer..." After collecting data, the software of the '409 patent then uses a numerical optimization technique to

maximize the airlines profit while meeting the constraints set by the customer. (See, *e.g.*, Col. 9, ll. 35-40).

This is nothing like what is claimed in the pending claims. The '409 patent does not disclose a method having, for example, target release dates, actual release dates or advance orders. Nor does the provisional application from which the '409 patent claims priority disclose any such elements (as the provisional application, Serial No. 60/514,248, is even shorter and less detailed than the '409 patent). Neither of these earlier Goel applications disclose, for example:

Independent Claim 10: "transforming the target release date into an actual release date when the number of received advance orders from advance purchasers equals the target number of advance orders" or "offering incentives to potential purchasers to submit advance orders."

Claim 13: "advancing the target release date to a second, earlier revised release date when the target number of advance orders is received" in combination with the limitations of claim 10.

Claim 14: "setting a goal and, when both the goal is met and the target number of advance orders is received, advancing the target release date to a third revised release date that is earlier than the second revised release date" in combination with the limitations of claim 10.

Claim 15: "resetting the target release date to a second target release date when the target number of advance orders is not received prior to the target release date" in combination with the limitations of claim 10.

Claim 17: "providing goal feedback information to at least some of the advance purchasers" in combination with the limitations of claim 10.

Claim 18: "transmitting to an interface of the specially programmed computer a target release date, a target number of advance orders, and a second release date, wherein

the target release date becomes an actual release date if the target number of advance orders is received, and the second release date becomes the actual release date if the target number of advance orders is not received" in combination with the limitations of claim 10.

Claim 19: "releasing a product to advance purchasers on the actual release date, and releasing the product to other purchasers at a later release date" in combination with the limitations of claim 10.

Similarly, the Goel references do not teach or suggest the limitations of claims 20-28. With respect to claim 28, which claims "one form of the product is released to advance purchasers on the actual release date, and a different form of the product is released to other purchasers at a later release date," there is no combination or suggestion in the cited prior art for these limitations of claim 28.

In summary, it is respectfully submitted that the Goel '185 publication is not a proper reference because it was filed several years after the filing date of the present application. And furthermore that none of the applications from which the '185 publication claims priority are proper references under 35 U.S.C. 103, either, as they are much less detailed than the '185 publication and do not disclose important claim elements.

Considering now the secondary reference – Mesaros, US Patent No. 7,181,419 – Mesaros discloses virtual "deal rooms" that take into account buyer profiles in order to customize price schedules. However, Mesaros does not teach or suggest the features as claimed and, as explained above, is not properly combined with the teachings of the Goel reference, which is dated far too late to be relevant to the present application.

Consequently, withdrawal of the rejections and allowance of the claims as presented is respectfully requested.

If the Examiner needs to speak with the undersigned, his direct telephone number is 310-242-2731.

The fee for a one month extension of time to respond for a Small Entity and the RCE fee for a Small Entity the Commissioner is authorized to charge to our Deposit Account No. 06-2425, and any additional fees that may be due.

Respectfully submitted,

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